

**SUMMARY REPORT OF INVESTIGATION**  
**Office of Inspector General Case # 15-0564 (Officer Joseph Walsh)**  
**June 30, 2016**

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This report consists of a summary of the evidence set out in the attached investigative materials and the Office of Inspector General's (OIG's) analysis of that evidence. An index of the investigative materials is attached.

**I. INTRODUCTION**

An OIG investigation has established that Joseph Walsh, a police officer for the Chicago Police Department (CPD) who was present when his partner Officer Jason Van Dyke shot Laquan McDonald on October 20, 2014, violated CPD Rules and Regulations during the subsequent investigations of McDonald's shooting. More specifically, and as detailed further below, Walsh made numerous false statements and material omissions during his subsequent interviews with CPD and the Independent Police Review Authority (IPRA). In addition, Walsh filed a false Tactical Response Report (TRR) and a false Officer's Battery Report (OBR) regarding his encounter with McDonald. Walsh's false reports, false statements, and material omissions all served to exaggerate the threat McDonald posed. OIG's investigation further established that Walsh failed to follow CPD Rules regarding the operation of CPD's in-car video systems. Accordingly, OIG recommends that CPD discharge Walsh and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

**II. APPLICABLE RULES, REGULATIONS, AND LAW**

**A. CPD Rules and Regulations**

CPD's Rules and Regulations set out the standards of conduct and duties of sworn members, as well as CPD goals. The Rules and Regulations state that sworn members must "conduct themselves at all times in such a manner as will reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement."

Article V of the CPD Rules and Regulations, entitled CPD Rules of Conduct (the CPD Rules), sets forth specifically prohibited acts. In pertinent part, the CPD Rules include the following prohibitions:

|                |   |
|----------------|---|
| <b>Rule 2</b>  | Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department. |
| <b>Rule 3</b>  | Any failure to promote the Department's efforts to implement its policy or accomplish its goals.                                      |
| <b>Rule 6</b>  | Disobedience of an order or directive, whether written or oral.   |
| <b>Rule 11</b> | Incompetency or inefficiency in the performance of duty.  |

**Rule 14** Making a false report, written or oral.

**B. CPD Special Order S03-05 (effective February 23, 2012 through February 24, 2016)**

CPD Special Orders are directives that establish protocols and procedures concerning specific CPD functions, operations, programs, or processes. Special Order S03-05 outlines the protocols CPD members are to follow regarding in-car video systems.<sup>1</sup> Section VI of the Special Order provides that at the beginning of their tour of duty, Department members assigned to a CPD vehicle equipped with an in-car video system are to:

- (1) visually inspect the in-car video system equipment for damage;
- (2) obtain the remote transmitter/audio recorder and ensure it is securely attached to the member's person; and
- (3) follow the start-up procedures for the in-car video system as trained and ensure the system is working properly.

The Special Order notes that members are to "immediately notify a supervisor if, at any time, the in-car video system is inoperable, damaged, the equipped vehicle becomes inoperable, or the remote transmitter/audio recorder is missing." During their tour, members are to "audibly and visually record events in accordance with this directive." At the conclusion of a tour of duty, members are to "verify the in-car video system is working properly."

**III. JOSEPH WALSH EMPLOYMENT HISTORY**

Walsh has worked as a CPD Police Officer since June 29, 1998. Walsh is a member of Fraternal Order of Police (FOP) Lodge 7.

**IV. SUMMARY OF INVESTIGATION**

**A. Procedural History of OIG's Investigation**

By letter dated December 8, 2015, IPRA Acting Chief Administrator Sharon Fairley requested that OIG conduct an administrative investigation "to determine whether certain police officers/witnesses made false statements on official reports prepared in connection with [Van Dyke's shooting of McDonald] and/or during the investigation of the incident."<sup>2</sup> IPRA further requested that OIG investigate "whether any of the involved Chicago Police officers committed

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<sup>1</sup> In-car video systems are also referred to as dash cameras or dashcams in this report.

<sup>2</sup> On November 24, 2015, the Cook County State's Attorney charged Van Dyke with a single count of first degree murder in the shooting of McDonald. On December 15, 2015, it subsequently charged him with six counts of murder. OIG has not been involved with any criminal investigation related to the shooting and makes no findings regarding Van Dyke's use of force.

any other violation(s) of Chicago Police Department rules, policies or procedures in their involvement with the incident, including, but not limited to, whether any officers' conduct may have interfered with or obstructed the appropriate investigation and handling of this matter."

Then, by letter dated January 13, 2016, CPD Interim Superintendent John J. Escalante requested that OIG conduct an "administrative investigation into any and all allegations of police officer misconduct" arising out of the October 20, 2014 shooting death of McDonald. The Superintendent's request asked OIG to investigate the following allegations: "whether any officer(s) made false statements on official reports submitted in connection with the shooting of Laquan McDonald on October 20, 2014; whether any officer(s) obstructed or interfered with the investigation of this incident, either individually or in collusion with others; and whether any officer(s) committed any violation of Chicago Police Department rules, policies, or orders in connection with their response and/or handling of this matter." Escalante attached to the letter request a copy of Sergeant Sandra Soria's Initiation Report, which raises allegations of misconduct related to the in-car video systems of the vehicles that were present during the McDonald shooting, and identified that Report as a basis for OIG's administrative investigation.

On March 10, 2016, Kevin Kilmer, Financial Secretary for the FOP, filed a grievance with CPD on behalf of all affected members, stating that OIG's attempts to conduct CPD officer interviews violated Article 6 of CPD's Collective Bargaining Agreement (CBA) with the FOP.<sup>3</sup> On March 16, 2016, FOP, on behalf of all impacted CPD officers, filed a "Complaint for Injunction in Aid of Arbitration" in the Circuit Court of Cook County asking the court to enjoin OIG from conducting interviews until the grievance was decided in arbitration.<sup>4</sup> The court dismissed the complaint and denied the injunction on March 22, 2016.

OIG's administrative investigation of other CPD employees' actions related to the McDonald shooting is ongoing. During the course of its investigation, OIG has gathered documents from CPD and IPRA, among other sources, and conducted numerous interviews, including interviews of thirteen CPD personnel who were at or responded to the scene of the shooting and seven civilian witnesses to the shooting. To date in its ongoing investigation, OIG has recommended disciplinary action against multiple CPD personnel, sustaining allegations that they each put forth a false narrative regarding the shooting.

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<sup>3</sup> Section 6.1, Paragraph I of the CBA states, "If the allegation under investigation indicates a recommendation for separation is probable against the Officer, the Officer will be given the statutory administrative proceeding rights, or if the allegation indicates criminal prosecution is probable against the Officer, the Officer will be given the constitutional rights concerning self-incrimination prior to the commencement of interrogation." CPD General Order GO8-01-01, Paragraph K contains similar language.

<sup>4</sup> *Fraternal Order of Police, Chicago Lodge 7 v. City of Chicago*, No. 2016 CH 03726 (Cir. Ct. of Cook County, Ill., Mar. 16, 2016).

## B. The Events of October 20, 2014

The following sections detail the shooting of McDonald, as well as the relevant events that occurred directly before and after the shooting.<sup>5</sup>

### 1. [REDACTED] and Barillas' Encounter with McDonald<sup>6</sup>

[REDACTED] and [REDACTED] Rudy Barillas were parking a truck in a lot at 41st Street and Kildare Avenue when [REDACTED] saw a black male, who she subsequently identified as Laquan McDonald, attempting to steal property from certain vehicles parked in the lot. Barillas told McDonald to leave the lot. McDonald responded by making growling noises. After Barillas again told McDonald to leave the lot, McDonald pulled out a knife and swung it at Barillas. Barillas, who had already called 911, then threw his cell phone at McDonald.<sup>7</sup> McDonald ran from the lot, first northbound on Kildare and then eastbound on 40th Street.

### 2. Officers Gaffney and McElligott's Encounter with McDonald<sup>8</sup>

Officer Thomas Gaffney and his partner Officer Joseph McElligott received a call over the radio that someone had broken into a truck at 4100 South Kildare and were dispatched to the scene.<sup>9</sup> Gaffney was driving and McElligott was in the passenger seat of their assigned vehicle, 815R.<sup>10</sup>

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<sup>5</sup> On April 22, 2016, OIG obtained maps of the locations that are relevant to the shooting from Google Maps and included those maps in Appendix A. Those maps generally reflect the street layout and location of relevant businesses as they were on the night of October 20, 2014.

<sup>6</sup> The following account of [REDACTED] and Barillas' encounter with McDonald is taken from the March 16, 2015 case supplementary report (CSR) submitted by CPD Detective David March, which includes the statements that [REDACTED] and Barillas provided to CPD on October 21, 2014, and October 22, 2014 respectively. OIG 15-0564 003077.

<sup>7</sup> OEMC recordings reflect that Barillas called 911 at 9:45 p.m. stating that he was holding "a guy right hear [sic] that stolen [sic] the radios" from trucks in a truck yard located at "41st and Kildare." OIG 15-0564 003227.

<sup>8</sup> The following account of Gaffney and McElligott's encounter with McDonald is taken from (1) the audio-recorded statements Gaffney and McElligott provided to IPRA on October 21, 2014, OIG 15-0564 000482-98, 000610-30; and (2) the March 16, 2015 CSR submitted by Detective David March, which includes the statements that Gaffney and McElligott provided to March on the night of the McDonald shooting. OIG 15-0564 003067-69.

<sup>9</sup> OEMC records reflect that Gaffney and McElligott received the call at 9:47 p.m. OIG 15-0564 003691.

<sup>10</sup> Below is a chart identifying the beat numbers and vehicle numbers of the CPD vehicles that were present when McDonald was shot, along with the names of the officers who were assigned to those vehicles. This SRI refers to the below-referenced vehicles by beat number, unless otherwise specified.

| Beat # | Vehicle # | Officers   |
|--------|-----------|--|
| 845R   | 6412      | Officer Walsh (driver), Officer Van Dyke (passenger)                 |
| 815R   | 8489      | Officer Gaffney (driver), Officer McElligott (passenger and on foot) |

When they arrived at 4100 South Kildare, they saw a Hispanic male and female standing by the gate to the truck yard. The two said that a black male wearing a black shirt, later determined to be McDonald, had been trying to steal the radio out of a semi-truck and had subsequently headed north toward 40th Street.

Gaffney and McElligott drove north on Kildare, turned right onto 40th Street, and saw McDonald walking east on the south side of 40th Street. McElligott exited the vehicle and commanded McDonald to stop and turn around. Gaffney stayed in the vehicle in case McDonald attempted to flee. McElligott ordered McDonald to take his hands out of his pockets. McDonald, who had been facing McElligott, turned and walked away with one hand still in his pocket. McDonald then turned again and took both of his hands out of his pockets. He had a knife in his right hand. McElligott drew his weapon and told McDonald to drop the knife. McDonald started walking east again, going from the sidewalk to the street and back. McElligott followed McDonald on foot, shining his flashlight on him, while Gaffney followed in 815R, parallel to McDonald.

As McDonald approached the intersection of 40th and Keeler, Gaffney reported to dispatch that McDonald was walking away with a knife in his hand.<sup>11</sup> Gaffney and McElligott continued to follow McDonald as he headed east, with McElligott giving McDonald orders to drop his knife and stop. McDonald kept turning around and giving the officers a “weird glaze[d] look.” Gaffney IPRA Tr. 11:20.<sup>12</sup>

As McDonald approached the intersection of 40th and Karlov, Gaffney turned his car toward McDonald to direct him down Karlov. Gaffney wanted to keep McDonald away from Pulaski, which was a more populated area. McDonald then swung his arm and popped 815R’s right front tire with his knife. McElligott was toward the back of 815R when McDonald popped its tire. After McDonald took a step back from the vehicle, Gaffney pulled up further in front of him to stop him from proceeding to Pulaski. McDonald then hit the right side of 815R’s windshield once with the knife in his right hand. The windshield did not break, but according to Gaffney, McDonald hit it as hard as he could. McDonald walked around the front of 815R and continued eastward on 40th Street. After McDonald had walked 10 to 15 feet, another squad car turned off of Pulaski onto 40th Street with its lights on, and McDonald began to sprint. McElligott followed McDonald on foot, and Gaffney followed McDonald in 815R. McDonald ran

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|      |      |  |
|------|------|--|
| 813R | 8779 | Officer Janet Mondragon (driver), Officer Daphne Sebastian (passenger) |
| 822R | 8765 | Officer Arturo Becerra (driver), Officer Leticia Velez (passenger)     |
| 841R | 8948 | Officer Ricardo Viramontes (driver), Officer Dora Fontaine (passenger) |

<sup>11</sup> OEMC recordings reflect that, at 9:53 p.m., 815R reported: “We’re at 40th and Keeler. This guy uh is walking away from us and he’s got a knife in his hand.” Approximately 30 seconds later, a dispatcher stated, “815R looking for a taser.” See OEMC Documents and CDs; see also OIG 15-0564 003691, 3228.

<sup>12</sup> OIG 15-0564 000620.

eastbound through the Burger King parking lot at 40th and Pulaski and then headed southbound on Pulaski. Video footage from several cameras captured McDonald's movements once he reached Pulaski.

### 3. Summary of the Relevant Video Footage

The below table contains a summary of the relevant video footage of the McDonald shooting, which includes the dashcam videos from 813R and 845R, video from the “WNE fire exit” security camera from the Greater Chicago Food Depository, which is bordered by 40th Street to the north, Karlov Avenue to the east, and Keeler Avenue to the west, and the security camera video from the Dunkin’ Donuts, located at 4113 South Pulaski Road (the DD Camera).<sup>13</sup>

| Time              | Event(s) Captured   | Source of Video                                 |
|-------------------|---|---|
| 9:53:17 – 9:54:42 | McDonald walks eastbound on the south side sidewalk of 40th Street; a CPD SUV travels east on 40th Street, parallel to McDonald with its front bumper even with McDonald; an officer on foot trails directly behind McDonald by the length of the SUV, with his flashlight trained on McDonald. <sup>14</sup> | Greater Chicago Food Depository Security Camera |
| 9:56:53 – 9:57:01 | 813R and 845R turn left onto 40th Street from Pulaski.  | 813R Dashcam                                    |
| 9:57:01– 9:57:09  | An unidentified person on 40th Street points the CPD vehicles toward the Burger King parking lot (813R); 845R turns into the parking lot (813R). McDonald runs southeast through the Burger King parking lot out onto Pulaski (845R).   | 813R Dashcam; 845R Dashcam                      |
| 9:57:09 – 9:57:20 | 845R drives over the curb and sidewalk north of Burger King and heads south on Pulaski (845R); 813R turns around, turns right onto 40th Street, and then right again on Pulaski (813R); McDonald runs southbound in the middle of Pulaski and enters the intersection of 41st Street and Pulaski (813R).      | 813R Dashcam; 845R Dashcam                      |
| 9:57:20 –         | 845R, which is facing east/southeast on Pulaski just north  | 813R Dashcam                                    |

<sup>13</sup> In addition to the videos cited in the summary, OIG obtained video footage from the security camera videos at Burger King and Focal Point, and the dash camera videos from Vehicles 815R and 821R. These videos did not contain footage relevant to this report.

<sup>14</sup> OIG confirmed the vehicle is 815R and the officer on foot is McElligott by comparing the video with photographs of the officers. OIG 15-0564 003356.

|                   |  |  |
|-------------------|--|--|
| 9:57:25           | of 41st street, turns right behind McDonald and proceeds south on Pulaski on the east side of the street; 845R's passenger door briefly opens and then closes as it passes McDonald on his left; McDonald continues southbound on Pulaski, toward 822R, which is stopped in the middle of Pulaski facing north.  |  |
| 9:57:25 – 9:57:28 | McDonald slows as he approaches 822R, touches his hands to his waist, and then, before Walsh and Van Dyke exit 845R, extends his right arm fully to his right—the video shows that he has a silver object in his right hand; 845R passes 822R and comes to a stop on the east side of Pulaski, facing south and almost directly south of 822R; Van Dyke opens 845R's passenger door.   | 813R Dashcam                             |
| 9:57:28 – 9:57:30 | McDonald changes course and begins walking southwest on Pulaski, away from 822R and 845R (813R); Van Dyke exits the passenger side of 845R with both of his feet in Pulaski's northbound left turn lane, his gun drawn and pointed at McDonald (813R). Walsh exits the driver side of 845R, just east of Pulaski's northbound left turn lane, with his gun drawn, and moves north along the driver side of 845R until he is several feet north of 845R (DD Camera).  | 813R Dashcam;<br>DD Camera <sup>15</sup> |
| 9:57:30 – 9:57:33 | McDonald continues to walk southwest, from the middle of Pulaski to the lane markers that divide the west side of the road (or approximately one lane west of where McDonald was prior to changing course) (813R). While McDonald walks southwest, Walsh begins moving sideways in a west/southwest direction, approximately parallel to McDonald, and crosses over the east side of Pulaski's northbound left-turn lane—his gun is pointed at McDonald (813R; DD Camera). Van Dyke takes approximately two steps northwest toward McDonald, with his left foot crossing into Pulaski's yellow-painted median strip—his gun is pointed at McDonald (813R; DD Camera). 822R drives north on Pulaski, away from 845R (813R). 841R drives north in the middle of Pulaski, toward 845R and stops just south of 845R, facing north (813R; DD Camera). | 813R Dashcam;<br>DD Camera               |

<sup>15</sup> The DD Camera video does not display an embedded timestamp. Therefore, OIG used the timestamp of 813R's video, which generally captured the same events as the DD Camera from a different angle, to establish the timeframe of the events captured by the DD Camera.

|                   |   |                               |
|-------------------|---|-------------------------------|
| 9:57:33 – 9:57:36 | As McDonald approaches the lane markers on the west side of Pulaski, walking in a southwest direction, he looks to his right and moves his right hand behind his waist, near the right side of his lower back, then brings his hand back to his right side (813R). As McDonald crosses the lane markers on the west side of Pulaski, he looks to his left and takes a step southbound (813R). Meanwhile, Walsh continues moving west/southwest with his gun pointed at McDonald, ultimately traversing almost the entire width of Pulaski's northbound left-turn lane (813R; DD Camera). Van Dyke takes an additional step west, toward McDonald, putting both of his feet in Pulaski's median strip and placing himself almost directly between McDonald and Walsh (813R; DD Camera). McDonald is then apparently shot and Walsh stops moving and adopts a stance, with his feet more than a shoulder's width apart (813R; DD Camera). | 813R Dashcam;<br>DD Camera    |
| 9:57:36 – 9:57:54 | McDonald spins between 180 and 270 degrees in a clockwise direction and then falls to the ground with the top of his head pointing south on Pulaski, approximately one street lane east of Van Dyke and just south of Van Dyke (813R). As McDonald falls to the ground, Van Dyke takes another step west toward McDonald, moving his right foot from Pulaski's median strip into the south-bound side of Pulaski—his gun remains pointed at McDonald (813R). Van Dyke subsequently takes an additional step or two south, toward McDonald (DD Camera). Other than those steps, Van Dyke's feet are stationary (DD Camera). After McDonald is on the ground, his legs and feet do not move (813R). McDonald's upper body makes small, intermittent movements as what appear to be puffs of smoke rise from McDonald's body (813R). <sup>16</sup>   | 813R Dashcam;<br>DD Camera    |
| 9:57:54 – 9:58:05 | An officer approaches McDonald and kicks the knife from his hand. McDonald does not make any noticeable movements.  | 813R Dashcam                  |
| 9:58:05- 9:58:20  | McDonald lies on the ground; no aid is rendered by CPD personnel. 823R, travelling northbound, pulls up on the  | 813R Dashcam;<br>823R Dashcam |

<sup>16</sup> OEMC records show that dispatch received notice to send an ambulance to the scene at 9:57:51. OIG 15-0564 003691.

|                     |  |   |
|---------------------|--|---|
|                     | west side of Pulaski, and stops just south of where McDonald is lying.   |   |
| 9:58:20-<br>9:58:57 | Several CPD officers walk and stand near McDonald as he lies on the ground; no aid is rendered by CPD personnel.   | 813R Dashcam; <sup>17</sup><br>823R Dashcam |
| 9:58:57-<br>9:59:02 | 823R begins making a U-turn on Pulaski. A Cook County Sheriff's Police Department (CCSPD) officer puts on blue gloves and walks toward McDonald. <sup>18</sup> McDonald is no longer visible in the video frame. | 823R Dashcam                                |

#### 4. CCSPD Officer Accounts of the October 20, 2014 McDonald Shooting<sup>19</sup>

While on patrol on October 20, 2014, CCSPD Officers Adam Murphy and Jeff Pasqua observed several CPD police vehicles pass by them. Both officers decided to follow the CPD vehicles. When they arrived at the scene, several CPD vehicles were already present—Pasqua estimated it was five or six. McDonald was lying on the pavement “gasping for his last breath of air.” Pasqua OIG Tr. 11:22-23. Meanwhile, the CPD officers were “standing around” and talking to each other. Murphy OIG Tr. 11:1. Murphy noted the CPD officers did not respond to him when he asked if they needed assistance. Murphy stated:

I see there’s blood all over the pavement. [McDonald] was kind of gurgling when he was sitting there. I remember his mouth was going open and closed like he was trying to gasp for air. And I looked for everybody else, and they were kind of standing there. I just started taking my gloves—my rubber gloves out to check for a pulse and to see if I could render aid.

Murphy OIG Tr. 12:18-13:2. He heard someone say an ambulance was en route. Both Officers Murphy and Pasqua recalled then watching McDonald take his final breaths.<sup>20</sup> It was “[m]aybe less than a minute before [McDonald] expired.” Murphy OIG Tr. 14:15-16. At no time did any CPD officers attempt to provide aid or comfort McDonald—Murphy stated, “That’s why I felt that I needed to go up to him.” Murphy OIG Tr. 14:11-12.

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<sup>17</sup> The last time stamp visible on the 813R dashcam video is 9:58:55.

<sup>18</sup> OIG identified the CCSPD officer as Officer Adam Murphy.

<sup>19</sup> The following CCSPD Officer accounts are taken from OIG’s June 23, 2016 interview of Jeff Pasqua and its June 24, 2015 interview of Adam Murphy. Pasqua and Murphy are currently CCSPD investigators.

<sup>20</sup> The Medical Examiner’s Case Report states McDonald was pronounced dead “on view” at Mount Sinai Medical Center on October 20, 2014, at 10:42 p.m. OIG 15-0564 015029.

After McDonald passed away, Murphy got up from beside him and noticed the shooting officer, who he now knows to be Van Dyke, “pacing back and forth in front of his car.” Murphy OIG Tr. 15:7-8. Murphy approached him and told him to sit down and drink water. As he was speaking with Van Dyke, Murphy “heard several officers telling [Van Dyke] to ‘call your union rep, call your union rep.’” Murphy OIG Tr. 15:16-17.

Murphy and Pasqua departed after approximately ten minutes on the scene when a CPD sergeant told them CPD did not need their assistance. At the time they left, there was “[a] sea of CPD” on scene. Murphy OIG Tr. 38:3; Pasqua OIG Tr. 25:7-8.

### C. Walsh’s Reports Concerning the McDonald Shooting

#### 1. Walsh’s October 21, 2014 Tactical Response Report<sup>21</sup>

On October 21, 2014, at 5:04 a.m., Walsh submitted a Tactical Response Report (TRR) with the R.D. No HX475653 and an Event Number of 1429315878, regarding his October 20, 2014 encounter with “Lequan [sic] McDonald.”<sup>22</sup> Under the heading titled “Assailant: Assault,” Walsh marked the box labeled “Imminent Threat of Battery.”<sup>23</sup> Under the heading titled “Assailant: Battery,” Walsh marked the box labeled “Attack with Weapon.” Under the heading titled “Assailant: Deadly Force,” Walsh marked the boxes labeled “Uses Force Likely to Cause Death or Great Bodily Harm” and “Weapon.” Walsh specified in the TRR that the “offender [was] armed with [a] knife.”

#### 2. Walsh’s Officer’s Battery Report<sup>24</sup>

Walsh completed and submitted an Officer’s Battery Report (OBR) with the R.D. No. HX475653 regarding his October 20, 2014 encounter with McDonald. The OBR form states that an OBR is to be completed when “a sworn member is the victim of a murder, aggravated battery, battery, aggravated assault, or assault while performing a police function either on-duty or off-duty.”<sup>25</sup>

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<sup>21</sup> OIG 15-0564 003317-18.

<sup>22</sup> According to CPD General Order G03-02-05, effective from October 1, 2002, to October 30, 2014, a TRR is used to document, among others, all incidents “involving the discharge of . . . a firearm,” or “which involve a subject fitting the definition of an assailant whose actions are directed against a Department member.”

<sup>23</sup> Pursuant to the Illinois Criminal Code, a person commits battery when he or she knowingly and without legal justification “(1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.” 720 ILL. COMP. STAT. 5/12-3. A person commits assault when he or she, without lawful authority, “knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 ILL. COMP. STAT. 5/12-1.

<sup>24</sup> OIG 15-0564 003315-16.

<sup>25</sup> See also Special Order S04-13-01, issued on December 28, 2012, which outlines the procedures to be followed for the preparation of an OBR.

In the OBR OIG obtained from CPD, Walsh stated that three officers were battered.<sup>26</sup> Under the heading titled “Manner of Attack,” Walsh marked the box labeled “stabbed/cut (including actual attempt).” Under the heading titled “Type of Manner/Threat,” Walsh wrote: “Swinging Knife.”

#### D. Walsh’s Statements Regarding the McDonald Shooting

##### 1. Walsh’s October 20, 2014 Statement to Detective March<sup>27</sup>

On March 15, 2015, Detective David March submitted a case supplementary report (CSR) with the R.D. Number HX475653 that contains a summary of CPD’s investigation.<sup>28</sup> Lieutenant Anthony Wojcik approved the CSR on March 16, 2015. Included in that CSR is a summary of the statement that March obtained from Walsh at the scene of the shooting, which states in relevant part as follows:

As Laquan McDonald ran eastbound through the Burger King parking lot, Walsh used the police vehicle he was driving to block McDonald from entering the restaurant.

As McDonald ran southbound on Pulaski Road, from the Burger King, Walsh pursued McDonald in the police vehicle. Walsh drove southbound in the northbound lanes to get ahead of McDonald, keeping the police vehicle between McDonald and a Dunkin’ Donuts restaurant, on the east side of Pulaski. As their vehicle passed McDonald, Officer Van Dyke opened the right front door of their vehicle, to exit the truck and confront McDonald. Walsh, realizing that at this point they were too close to the armed McDonald to safely exit the vehicle, told Van Dyke to wait until they got further ahead of McDonald. Walsh drove further south on Pulaski. He stopped his vehicle south of McDonald and exited the driver’s door as Van Dyke exited the right side of the vehicle. Walsh drew his handgun when he exited the vehicle.

Officer Walsh came around the rear of the police vehicle and joined Officer Van Dyke on the right side of the vehicle. Walsh also stood in the street on Pulaski, facing northbound, as McDonald walked southbound toward the officers. Walsh

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<sup>26</sup> During Walsh’s March 8, 2016 interview, *see infra* § IV(F), Walsh produced an OBR containing the same information as the OBR OIG obtained from CPD, but which asked how many officers were “assaulted or battered.”

<sup>27</sup> OIG 15-0564 003066-67.

<sup>28</sup> CPD’s investigation in the aftermath of the McDonald shooting was reported under record number HX-475653, and most reports were classified as an investigation into an aggravated assault in which McDonald was the offender. In a few reports, the case was classified as an investigation into a justifiable homicide of which McDonald was the victim. An additional record number was also created and classified as a justifiable homicide, apparently for recordkeeping purposes. In CPD’s investigative reports classified under the aggravated assault, CPD personnel drew conclusions about the propriety and lawfulness of Van Dyke’s shooting of McDonald. This raises questions about CPD’s role in investigating a police-involved shooting in light of IPRA’s jurisdiction over the matter.

ordered McDonald to “Drop the knife!” multiple times as McDonald approached the officers.

Officer Walsh also backed up, attempting to maintain a safe distance between himself and McDonald. McDonald ignored the verbal direction given by both Walsh and Officer Van Dyke, and continued to advance toward the officers. When McDonald got to within 12 to 15 feet of the officers he swung the knife toward the officers in an aggressive manner. Van Dyke opened fire with his handgun and McDonald fell to the ground. Van Dyke continued firing his weapon at McDonald as McDonald continued moving on the ground, attempting to get up, while still armed with the knife.

When the gunfire stopped and McDonald was not moving anymore, Walsh approached McDonald with Van Dyke. Walsh continued to order McDonald to “Drop the knife!” multiple times, as McDonald was still holding the knife in his right hand. Walsh forcibly kicked the knife out of McDonald’s hand and then notified the dispatcher on the police radio that shots had been fired by the police. An ambulance was also requested for McDonald.

As they waited for the ambulance to respond to the scene, Officer Walsh told McDonald to ‘hang in there,’ and that an ambulance was on the way.

Officer Walsh said he believed McDonald was attacking Walsh and Officer Van Dyke with the knife and attempting to kill them when the shots were fired. Walsh stated he did not fire his handgun because Van Dyke was in the line of fire between Walsh and McDonald. Walsh thought Van Dyke fired eight or nine shots total.<sup>29</sup>

## 2. Walsh’s October 21, 2014 IPRA Interview<sup>30</sup>

On October 21, 2014, at 5:47 a.m., IPRA investigator Brian Killen interviewed Walsh at Area Central Police Headquarters, located at 5101 South Wentworth, regarding the McDonald shooting. The interview took place at 5:47 a.m. Walsh was accompanied by attorney Dan Herbert and FOP Field Representative Kriston Kato. Prior to the interview, Killen informed Walsh that “any intentional falsification to any answer to any question would be in direct violation of Department rules and regulations,” and that his “failure to provide a complete and accurate account of th[e] incident could result in a finding of a violation of Rule 14 with discipline leading up to and including separation from the Chicago Police Department.” Walsh IPRA Tr. 3:10-21. Walsh stated that he understood the potential disciplinary consequences of

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<sup>29</sup> Detective March completed a General Progress Report (GPR) relating to his interview of Walsh that contains March’s handwritten notes of the interview. OIG 15-0564 003242–43. March’s handwritten notes of the interview do not differ in any significant way from the summary of Walsh’s statement in the CSR.

<sup>30</sup> OIG 15-0564 000352–67.

making a false statement to IPRA and providing a less than complete account of the shooting to IPRA. Walsh stated in relevant part as follows.

Walsh started work at 9 p.m. on October 20, 2014. Van Dyke was Walsh's partner that night, and they were assigned to beat 845R. Walsh and Van Dyke were both in full uniform and were assigned vehicle 6412, a marked Chevy Tahoe.<sup>31</sup> Walsh was the driver of the vehicle, and Van Dyke was the passenger.

Walsh and Van Dyke were at a 7-11 near 5900 South Pulaski when they received a call over the radio stating that 815R had requested assistance regarding a man with a knife near 40th and Pulaski. Walsh and Van Dyke left the 7-11 parking lot and drove to 40th and Pulaski. Walsh pulled into the Burger King parking lot because there was a civilian standing on the north side of 40th Street, pointing in the direction of the parking lot. Walsh then observed a black male in the Burger King parking lot running with a knife in his right hand and being followed by Officer McElligott. Walsh gave chase in the 845R vehicle and positioned the vehicle so that McDonald could not get into the Burger King. McDonald ran past the Burger King, across the sidewalk on Pulaski, and headed southbound on Pulaski in the southbound lanes. Walsh jumped the curb over the sidewalk in the 845R vehicle and headed southbound in the northbound lanes, ultimately passing McDonald:

IPRA: And what happens then?

Walsh: Um exit the my vehicle along with Officer Van Dyke. Uh I run uh to the back of my vehicle and um I drew my weapon and I began to give verbal commands yelling drop the knife numerous times.

IPRA: And whaddoes [sic] the offender do?

Walsh: Continues to run in my direction. Uh flailing a knife in his right hand. And um continue towards us.

IPRA: Does he close the distance?

Walsh: Yes he does.

IPRA: Okay. And how close does he get to you, to you I guess? If you had to guess.

Walsh: Uh I back up uh and retreat several feet while he was closin' the distance approximately 12 to 15 feet.

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<sup>31</sup> Walsh also referred to vehicle 6412 as 845R.

IPRA: If you had to guess distance between Officer Van Dyke and the offender?

Walsh: Ten feet.

IPRA: Does the offender continuously approach?

Walsh: Yes.

IPRA: Has the knife in his hand?

Walsh: Yes.

IPRA: You said he was flailing it?

Walsh: Yes.

Walsh IPRA Tr. 11:13-12:32.

Van Dyke then discharged his weapon, firing eight or nine times, causing McDonald to fall to the ground. Walsh did not fire because Van Dyke was in his line of fire. Walsh approached McDonald as he was on the ground and told him to drop the knife. McDonald refused so Walsh stepped on his hand and kicked the knife from McDonald's clenched fist. Walsh then called on the radio to report shots fired by the police. When asked by IPRA whether everything he stated was "a true and accurate account of what occurred," Walsh said, "Yes." Walsh IPRA Tr. 15:8-10.

#### **E. Records and Interviews Concerning 845R's In-Car Video System**

On October 21, 2014, CPD Sergeant Lance Becvar submitted a supplementary report for R.D. No. HX475653 concerning his retrieval of video from the in-car video systems of the five CPD vehicles that were on-scene when Van Dyke shot McDonald.<sup>32</sup> With respect to 845R (also referred to as Vehicle 6412), the vehicle Walsh was driving on October 20, 2014, Becvar noted "video recovered." Becvar also completed a corresponding "In Car Camera Video Retrieval Worksheet" regarding his October 20, 2014 video retrieval, in which he made the following notation with respect to 845R: "No mics; mic charger disconnected."<sup>33</sup>

On July 17, 2015, Becvar sent an email summarizing his findings regarding his October 20, 2014 video retrieval from 845R and the other four CPD vehicles that were on scene when Van Dyke shot McDonald.<sup>34</sup> With respect to 845R, Becvar stated as follows: "Video recovered Titled

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<sup>32</sup> OIG 15-0564 004991.

<sup>33</sup> OIG 15-0564 004992.

<sup>34</sup> OIG 15-0564 000567.

PC0S571@20141020215250 view out of focus. Foucsing [sic] problem found to be related to a loose cable connection for the camera. No MICs in vehicle and the charging cradles disconnected from power.”

In a January 27, 2016 interview with Sergeant Becvar, he stated that the cable connector must have been pulled out of 845R’s in-car video system or loosened from vibration. Becvar OIG Tr. 74:15-18. He estimated the chances that the cable disconnected from vibration at 10 or 15 percent. With respect to the charging cradles, Becvar stated that they plug into the bottom of the chargers and “vibrate loose or people possibly take them out.” Becvar OIG Tr. 80:8. Becvar also stated that if a vehicle’s microphones were synced and functioning, its in-car video display and the recovered video would both show an on-screen “M1” (driver mic) and an “M2” (passenger mic).<sup>35</sup> Becvar’s statement is corroborated by the in-car video system user manual, which establishes that officers are able to see “M1” and “M2” displayed on their in-car video system in real time as it is recording if the microphones are properly connected.<sup>36</sup> The user manual further reflects that the in-car video system display contains a “camera preview” that “displays the image as seen through the camera lens. The default image is set as the front facing camera.”<sup>37</sup>

In OIG’s March 8, 2016 interview with Walsh, Walsh said he was driving 845R on the evening of October 20, 2014; that vehicle had an in-car video system.<sup>38</sup> Walsh was generally not assigned 845R; each work day he drove a different vehicle.

As of October 2014, Walsh had worked in police vehicles with in-car video systems for approximately five years. Walsh was familiar with the in-car video system and the protocols that governed it. Walsh received a one-day in-service training course at the police academy regarding CPD Special Order S03-05, which governs CPD members’ use of the in-car video systems.

Walsh was aware that police officers are supposed to visually inspect the in-car video system equipment for damage at the beginning of their tour of duty. Walsh was also aware that police officers (1) are required to follow the start-up procedures for the in-car video system as trained and (2) are to notify a supervisor if at any time the in-car video system becomes inoperable. The start-up procedures involve testing to see if the system is functional by turning the light bar on. Once the light bar is on, the camera turns on and one can see if it is working. Officers are also supposed to sync the system’s mics by taking them and placing them into a station that is built into the vehicle.

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<sup>35</sup> The video recovered from 845R’s in-car video system on October 20, 2014 does not show an “M1” or an “M2.”

<sup>36</sup> See Coban Mobile Recorder User Manual. OIG 15-0564 008973.

<sup>37</sup> OIG 15-0564 008972

<sup>38</sup> For a more detailed summary of OIG’s interview of Walsh, *see infra* § IV(F).

Walsh could not recall having any issues with 845R's in-car video system prior to October 20, 2014. Walsh could also not recall what procedures he followed with respect to 845R's in-car video system on October 20, 2014. More specifically, Walsh could not recall whether he (1) visually inspected 845R's in-car video system for damage; (2) logged into 845R's in-car video system after entering the vehicle; (3) synced 845R's microphones; or (4) verified that 845R's mics were synced and operational.

Walsh did not know why 845R's in-car video system had a loose cable connection. He denied intentionally loosening or disconnecting cables connected to 845R's in-car video system. Walsh also denied intentionally tampering with 845R's in-car video system.

Walsh acknowledged that there was no audio accompanying the video that was recovered from 845R's in-car video system on the night of October 20, 2014. Walsh did not know why 845R's in-car video system did not capture any audio that night. Walsh conceded that 845R's emergency lights were activated in the minutes prior to the McDonald shooting and therefore the vehicle's in-car video system should have been capturing audio and video footage. Walsh denied disconnecting 845R's microphone charging cable.

Walsh admitted that he did not call his supervisor to report that 845R's in-car video system was not functioning properly. Walsh claimed that "normal practice" is to notify one's sergeant of any in-car video system issues at 10:30 p.m., when the sergeant logs in, but acknowledged that he never notified his sergeant of the inoperability of 845R's in-car video system at any time.

#### F. OIG Interview of Walsh

On February 22, 2016, pursuant to Section 6.1 of the CBA between CPD and FOP, OIG, through CPD's Bureau of Internal Affairs, served Walsh with a Notification of Interview, Notification of Allegations, and copies of his prior statements, including (1) his October 20, 2014 statement to Detective March, contained in the March 16, 2015 CSR, (2) Detective March's GPR containing his handwritten notes of his interview of Walsh, and (3) Walsh's October 21, 2014 statement to IPRA. In addition, OIG provided Walsh with the dashcam footage from 813R and 845R and the security camera footage from Dunkin' Donuts.<sup>39</sup>

On March 8, 2016, OIG investigators interviewed Walsh under oath after informing him of his administrative advisements orally and in writing. He provided oral and written acknowledgement of the reading of those advisements. The interview was transcribed by a certified court reporter. Officer Walsh was accompanied by his attorney Colleen Daly.

At his March 8, 2016 OIG interview, Walsh, citing Section 6.1, paragraph I of the applicable CBA and CPD General Order GO8-01-01, objected to the fact that OIG did not advise him of his constitutional rights concerning self-incrimination prior to the interview. Walsh further objected to the interview on the grounds that OIG did not provide him with a copy of every statement he

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<sup>39</sup> During his March 8, 2016 interview, Walsh acknowledged that he reviewed those videos in preparation for his interview.

made previously to the FBI and U.S. Attorney's Office, including his grand jury testimony. Walsh ultimately answered all questions posed by OIG after being ordered by a superior officer to do so. In summary, Walsh stated as follows.

As of October 20, 2014, Walsh was a relief officer, meaning he filled in for absent officers and did not have a regular partner. Walsh had partnered with Van Dyke on one previous shift. Walsh does not socialize with Van Dyke.

Walsh spoke with Detective March less than an hour after the shooting occurred. Walsh was on foot, by the passenger side of 815R. Walsh's sergeant was also present. March informed Walsh he was going to be the lead detective and asked Walsh if he shot McDonald. Walsh did not recall whether March asked him any other questions at the scene of the shooting. Walsh also had a five-minute conversation with Deputy Chief David McNaughton following McNaughton's walk-through of the scene with Van Dyke. Walsh and McNaughton discussed Walsh's arrival to the scene and the location of the shooting. Later, while sitting in the 845R vehicle, Walsh told Van Dyke that he should call his family to let them know he may not be home in the morning. Walsh also had a conversation at the scene of the shooting with FOP representative Marlon Harvey while the two were in Walsh's vehicle. Harvey told Walsh that Walsh would probably be talking to IPRA, going to Area Central to speak to detectives, and waiting on scene to do a walk-through with a street deputy.

Sergeant Franko drove Walsh and Van Dyke from the scene of the shooting to Area Central. Walsh did not have any conversations with Van Dyke during that trip. While at Area Central, Walsh spoke to Detective March alone in a small office. March asked Walsh about the shooting, but Walsh only had a vague recollection of their subsequent conversation. Walsh did not recall whether March took notes during that interview.

#### 1. Walsh's Statement to Detective March

Walsh said that the statement Detective March attributed to him in the March 16, 2015 CSR accurately reflected what Walsh told March on the night of October 20, 2014. When asked whether there were any statements attributed to him in the CSR that were inaccurate, Walsh noted with respect to the statement, "Walsh also stood in the street on Pulaski facing northbound as McDonald walked southbound towards the officers," that he did not think he used the term "walk." Walsh, however, was not sure what alternative word he used. Walsh considered all his other statements in the CSR to be accurate. According to Walsh, his statement in the CSR captured all the substantive details of the McDonald shooting that he provided to March.

Walsh stood by his statements to March that:

- McDonald ignored the verbal directive he and Van Dyke gave him to drop the knife and continued to advance toward Walsh and Van Dyke;
- McDonald swung a knife toward Walsh and Van Dyke when McDonald got within 12 to 15 feet of them;

- McDonald was attacking and attempting to kill Walsh and Van Dyke when Van Dyke shot McDonald; and
- McDonald was attempting to get up after Van Dyke opened fire and McDonald fell to the ground.

Walsh also made the following statement when asked about each of these statements: “That is how I recalled it.” Walsh OIG Tr. 140:12, 142:7, 143:13, 144:5, 146:9.

With respect to his statement to Detective March that Van Dyke fired eight or nine shots total, Walsh stated that he did not stand by his previous statement. Walsh subsequently learned that Van Dyke fired 16 shots. He learned that information at Area Central during the investigation the night of the shooting.

When asked why he did not tell March that (1) McDonald changed the direction in which he was walking prior to the shooting; or (2) he and Van Dyke moved toward McDonald prior to the shooting, Walsh stated that he did not intentionally leave anything out. Walsh added that, from his review of the video, he “did not move forward.” Walsh OIG Tr. 143:1-2.

## 2. Walsh’s October 21, 2014 IPRA Interview

OIG asked Walsh about several of the statements he made in his October 21, 2014 IPRA interview. Walsh stood by his statement to IPRA that McDonald continuously closed the distance between McDonald and Walsh and Van Dyke. Walsh also stood by his statement to IPRA that McDonald flailed a knife in his right hand while continuing to run in Walsh’s direction. However, Walsh noted that after looking at the video, McDonald appeared to be “trot[ting]” as opposed to running. Walsh OIG Tr. 76:4-6.

When OIG asked Walsh why he did not tell IPRA that McDonald changed the direction in which he was walking prior to being shot by Van Dyke, Walsh responded: “I did not intentionally leave out anything. That was my perception of what I recalled.” Walsh OIG Tr. 76:21-23. When asked whether he considered McDonald’s change of direction, away from Walsh and Van Dyke, relevant to IPRA’s inquiry, Walsh responded: “At the time it was my perception of what was occurring in my mind, and I thought that I gave an accurate statement.” Walsh OIG Tr. 77:5-7.

With respect to Walsh’s statement to IPRA that he backed up and retreated several feet from McDonald, Walsh stated: “I was in fear and that’s why I retreated.” Walsh OIG Tr. 79:7-8. Walsh later added that: “I came around my vehicle and passed the rear of my vehicle and realized that McDonald was advancing too closely, and then I retreated back.” Walsh OIG Tr. 80:13-16. Walsh claimed he retreated “several feet.” Walsh OIG Tr. 80:18.

When asked whether he stood by his statement to IPRA that he provided a true and accurate account of the McDonald shooting to IPRA, Walsh stated: “I never made any intentional false statements of any kind. I answered each question truthfully in response to how I recalled the

incident.” Walsh OIG Tr. 82:8-11. With respect to the allegation that Walsh provided a false narrative to IPRA regarding the McDonald shooting, Walsh first noted that on page 14 of his IPRA interview transcript he stated that he called for an ambulance, but actually Officer Dora Fontaine called for the ambulance. Walsh then stated that other than that one correction, he stood by his prior statement to IPRA.

### 3. Walsh’s October 21, 2014 TRR

Walsh completed his October 21, 2014 TRR at a desk computer located on the second floor of the Detective Division at Area Central; Walsh was logged on to CPD’s CLEAR system. Walsh said that someone requested he complete the TRR, but he could not recall who. Sergeant Franko was present at Area Central when Walsh was completing the TRR and supplied Walsh with certain information, such as the RD number, the address of the incident, and the time of its occurrence.<sup>40</sup> Walsh did not recall Franko supplying him with more substantive information regarding the incident. FOP representative Marlon Harvey was standing behind Walsh as he filled out the TRR in case he needed any assistance completing the form. Walsh denied that Harvey provided him any information that he put in the TRR.<sup>41</sup> Walsh made the decision as to what boxes to check in the TRR based on what he experienced and the information he gathered. Prior to October 20, 2014, Walsh had completed nine TRRs.

Walsh said he stood by his checking of the box in the TRR marked “imminent threat of battery.” Walsh also stood by his checking of the box in the TRR marked “attack with weapon,” stating that his entry was based on the “totality of the circumstances of the entire incident,” and his knowledge that McDonald had punctured a tire on a vehicle. Walsh OIG Tr. 103:17-22. Walsh initially stated that he was not asserting in the TRR that McDonald attacked him or Van Dyke with a weapon. Rather, it was only McDonald’s attack on Officer Gaffney to which he was referring:

OIG: When you marked “attacked with weapon,” were you asserting that Laquan McDonald attacked yourself, Officer Walsh, with a weapon?

Walsh: No.

OIG: You weren’t. Okay. Were you asserting that Laquan McDonald attacked Officer Van Dyke with a weapon?

Walsh: No.

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<sup>40</sup> Franko, in his June 13, 2016 OIG interview, acknowledged that he might have provided Walsh certain factual information, such as the shooting location and time, but denied providing Walsh any more substantive direction regarding how to complete the TRR or OBR.

<sup>41</sup> Harvey, in his June 10, 2016 OIG interview, stated that he did not recall assisting Walsh with the completion of his TRR or OBR.

OIG: It was only Officer—the attack on Officer Gaffney and McElligott's vehicle that you were referring to there?

Walsh: Yes.

Walsh OIG Tr. 104:18-105:7.

However, Walsh subsequently acknowledged that when he marked the box on the TRR labeled "Did not follow verbal direction," Walsh was referring to McDonald's failure to follow his (Walsh's) verbal direction, not Gaffney or McElligott's. Walsh further acknowledged that he marked the box labeled "Member presence," meaning Walsh was present at the scene of the attack. Walsh was not present when Gaffney and McElligott had their interaction with McDonald. When asked why he marked the member presence box when he was supposedly referring to Gaffney's encounter with McDonald, Walsh stated that "at the final moment when [McDonald] had raised the knife and come across his body with the knife, that is an attack with a weapon." Walsh OIG Tr. 108:17-19. Walsh explained that right before or at the time McDonald was first shot, McDonald raised his knife with his right hand across his body. Walsh considered that movement to be an attack with a weapon on him. Walsh then claimed it was that movement he was referring to when he checked the "imminent threat of battery" box in the TRR.

Walsh stood by his second explanation for marking the "uses force likely to cause death or great bodily harm" box in the TRR, and said that he was referring to "the very moment [McDonald] raised that knife and directed it in our direction while he was continuing to move and he was coming from south—going southbound on Pulaski." Walsh OIG Tr. 110:16-19.

According to Walsh, he, Van Dyke, and Gaffney filled out TRRs because it was determined through the Detective Division's investigation that they were all victims of assaults. Walsh did not know how that determination was reached and said he was not a part of that process.

#### 4. Walsh's October 21, 2014 OBR

After Walsh completed the TRR, he immediately began completing an OBR. An officer is to complete an OBR when he or she is a victim of an assault or battery. Walsh knew he had to complete an OBR with respect to the McDonald shooting because he was documented as a victim of an assault. Walsh completed the OBR on the same computer he completed the TRR. Walsh did not recall whether he consulted with Franko or Harvey during his completion of the OBR. After Walsh submitted the TRR and OBR electronically, he informed Franko in person that he had completed the forms. It is Walsh's general practice to review the TRRs and OBRs he completes before sending them on to his sergeant for approval. Walsh was never contacted or asked any follow-up questions regarding the TRR or OBR he submitted.

Walsh acknowledged that he was not battered by McDonald on October 20, 2014. When asked about his statement in the OBR that three officers were battered on October 20, 2014, Walsh stated that the OBR form he completed on October 21, 2014, asked him to name the number of

officers who were assaulted or battered.<sup>42</sup> Walsh claimed that McDonald committed an assault on him, Gaffney, and Van Dyke, and that the nature of his assault was “[b]eing an armed offender with a knife, displaying it, and swinging it in our direction while he was moving.” Walsh OIG Tr. 123:24-124:2.

Walsh stood by his selection of “stabbed/cut (including actual attempt)” on the OBR. When asked when McDonald attempted to stab Walsh and Van Dyke, Walsh responded: “the totality of the circumstances along with stabbing the tire and upon swinging the knife.” Walsh OIG Tr. 125:24-126:2. Walsh interpreted McDonald’s swinging of his knife as an attempted stabbing of him and Van Dyke.

## V. ANALYSIS

OIG’s investigation established that Officer Joseph Walsh made numerous false statements and material omissions in his interviews with CPD and IPRA regarding the McDonald shooting. In addition, Walsh filed a false Tactical Response Report and a false Officer’s Battery Report regarding his encounter with McDonald. Walsh’s false reports, false statements, and material omissions all served a similar purpose: to exaggerate the threat posed by McDonald. Walsh’s actions embody the “code of silence” that has no legitimate place in CPD and are contradictory to CPD’s stated values and official policies. Accordingly, OIG recommends that CPD discharge Walsh.

Walsh’s actions, individually and collectively, constitute violations of CPD Rules. Each of Walsh’s false statements constitutes a violation of CPD Rule 14 (making a false report, written or oral). His false statements also constitute violations of Rule 2 (engaging in any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department) and Rule 3 (failing to promote the Department’s efforts to implement its policy and accomplish its goals). An officer who has made false statements in an official investigation has irrevocably tainted not only his credibility, but also the credibility of CPD and fails to promote CPD’s goal of employing officers with personal integrity and professional devotion to law enforcement. Walsh further violated Rule 6 (disobedience of an order, namely S03-05) and Rule 11 (incompetency in the performance of a duty) by failing to audibly record events with his in-car video system and failing to notify his supervisor about the system’s inoperability. Accordingly, OIG recommends that CPD discharge Walsh.

### A. Walsh’s False Statements to Detective March

Walsh made several statements to Detective March on the night of October 20, 2014, regarding the McDonald shooting that are clearly contradicted by the 813R and Dunkin Donuts videos, the most objective and reliable evidence of the events that night. Most notably:

- McDonald did not advance toward Walsh after Walsh exited his vehicle

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<sup>42</sup> During his interview, Walsh produced an OBR, containing the same information as the October 21, 2014 OBR Walsh completed, which required Walsh to identify how many officers were assaulted or battered.

As described in the Relevant Video Footage summary chart set forth above, *see supra* § IV(B)(3), by the time Van Dyke and Walsh exited their vehicle, McDonald was walking in a southwest direction away from Van Dyke and Walsh, who at all times prior to the shooting were east of McDonald. Thus, at no time during the encounter between McDonald and Walsh and Van Dyke did McDonald advance toward the two officers. Rather, it was the officers who moved northward or west/southwestward, toward McDonald, as he continued to walk in a southwest direction.

- Walsh did not back up several feet prior to Van Dyke shooting McDonald

The video evidence further reflects that Walsh did not back away from McDonald prior to the shooting. Rather, Walsh moved northward and then westward toward McDonald, and then moved parallel to McDonald, crossing almost the entire left-turn lane on Pulaski in a southwest direction as McDonald continued to walk in a southwest direction. Walsh never moved in a way that increased the distance between himself and McDonald. Rather, the video evidence shows that Walsh either moved toward McDonald, moved parallel to McDonald, or stayed still.

- McDonald did not swing a knife toward Walsh and Van Dyke

The 813R dashcam video also evidences that McDonald did not swing a knife in the direction of Walsh and Van Dyke. Seconds prior to the shooting, McDonald moved the knife from his right hip to the right side of his lower back, but this modest movement of the knife was not in the direction of Walsh and Van Dyke—Walsh and Van Dyke were in front of McDonald and to his left, and McDonald moved his knife behind his back, not in front of his body.

- McDonald did not attempt to kill Walsh and Van Dyke

For the reasons stated above, the objective evidence presented in the videos cannot be squared with Walsh's claim that McDonald was attempting to kill Walsh and Van Dyke.

- McDonald did not attempt to get up after he was shot and fell to the ground

Finally, the 813R dashcam video reveals that McDonald did not attempt to get up after he fell to the ground. Upon being shot and falling to the street, McDonald never moved his legs or lower body. McDonald's upper body only makes small, intermittent movements as what appear to be puffs of smoke rise from his body. Those small movements are not suggestive of a person trying to get to his feet. Accordingly, Walsh's statement that McDonald attempted to get up after he was shot is demonstrably false.

During Walsh's interview with OIG, when asked about the above false statements, he made some attempt to suggest that he may have unintentionally provided an inaccurate account of events to Detective March. *See* Walsh OIG Tr. 140:12, 142:7, 143:13, 144:5, 146:9 (repeatedly stating "That is how I recalled it" when asked about the above false statements). However, Walsh ultimately stood by the accuracy of those statements, even after reviewing the relevant

video footage.<sup>43</sup> Walsh’s ratification of his previous statements to March undercuts any claim that Walsh made those statements due to a misapprehension of quickly unfolding events.

Notably, all of Walsh’s false statements served to exaggerate the danger McDonald posed to Van Dyke and Walsh. In this context, Walsh’s statements can be seen as a deliberate attempt to establish the false narrative that a back-pedaling Van Dyke shot an onrushing McDonald in response to McDonald’s potentially deadly knife attack. The video evidence puts a lie to Walsh’s narrative. In addition, Walsh made multiple material omissions in his statement to March, reinforcing that false narrative. In particular, Walsh failed to state that McDonald was walking away from Van Dyke and Walsh prior to the shooting and that Van Dyke and Walsh moved toward McDonald prior to the shooting.

## B. Walsh’s False Statements to IPRA

Walsh repeated his false narrative of the McDonald shooting to IPRA during his October 21, 2014 interview with Investigator Killen. Specifically, Walsh again stated that McDonald closed the distance between McDonald and Van Dyke and that Walsh backed up several feet while McDonald was closing in on him and Van Dyke. As detailed above, however, Walsh’s statements are contradicted by the video evidence. In addition, Walsh failed to state to IPRA that McDonald was walking away from Van Dyke and Walsh prior to the shooting and that Van Dyke and Walsh moved toward McDonald prior to the shooting. Walsh’s repetition of these false statements and material omissions to two separate investigative bodies demonstrates the deliberate nature of his false testimony.<sup>44</sup>

## C. False Statements in Walsh’s TRR and OBR

Walsh also asserted his false narrative of the McDonald shooting in the official CPD reports he submitted regarding his encounter with McDonald. In his TRR, Walsh claimed that McDonald (1) used force likely to cause death or great bodily harm to Walsh; (2) attacked Walsh with a weapon; and (3) created an imminent threat of battery. Walsh initially claimed that he was referring to McDonald’s encounter with Gaffney and McElligott, and not his own encounter with McDonald, when he checked the boxes marked “Attack with Weapon” and “Uses Force Likely to Cause Death or Great Bodily Harm,” effectively conceding that McDonald did not attack him with a weapon. *See* Walsh OIG Tr. 104:18-105:7. After OIG informed Walsh that his TRR stated that Walsh was present during the attack he identified, Walsh then asserted that McDonald raised his knife with his right hand across his body while he was in Walsh’s presence and that Walsh considered that movement to be an attack with a weapon on him. As outlined above, however, McDonald, while in Walsh’s presence, never swung his knife in a manner to cause

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<sup>43</sup> Walsh corrected certain aspects of his statement—he noted that he did not stand by his statement that Van Dyke shot McDonald eight or nine times and stated that he later learned that Van Dyke shot McDonald 16 times—but did not make, or seek to make, any such corrections with respect to any of the false statements referenced in this section.

<sup>44</sup> As with his statement to Detective March, Walsh corrected certain aspects of his IPRA statement during his OIG interview. For instance, he noted that he incorrectly stated to IPRA that he called an ambulance when in actuality Officer Fontaine called the ambulance. However, Walsh did not make any such corrections with respect to the false statements referenced herein and, instead, stated that he stood by the accuracy of those statements.

death or great bodily harm to Walsh. In addition, McDonald was walking away from Walsh during the vast majority of the encounter. Thus, Walsh's TRR constitutes a false report and represents an additional attempt by Walsh to exaggerate the threat McDonald posed.

In Walsh's OBR, he similarly stated that McDonald attempted to stab him by swinging his knife at him. Accordingly, Walsh's OBR also constitutes a false report.

#### **D. Failure to Comply with Special Order S03-05**

Walsh also violated Rule 6 (disobedience of an order) and Rule 11 (incompetency in the performance of a duty) by failing to audibly record events with his in-car video system and failing to notify his supervisor about the system's inoperability as required by S03-05. As Walsh acknowledged, CPD did not recover any audio from 845R's in-car video system. Sergeant Lance Becvar, who recovered the video from 845R's in-car video system, found that the system's charging cradles were disconnected from their power source and that the video was out of focus due to a loose cable connection. In addition, 845R's dashcam video reflects that Walsh and Van Dyke did not connect their microphones to 845R's in-car video system because there is no "M1" or "M2" symbol visible at the top of the video footage from October 20, 2014 as there would have been if the microphones were connected. If Walsh had properly followed the pre-tour of duty in-car video system protocols, he would have identified all these issues. Walsh also admitted that he never contacted his supervisor regarding the inoperability of 845R's in-car video system. Thus, the evidence demonstrates that Walsh failed to follow the in-car video system procedures set forth in S03-05 on October 20, 2014.

#### **VI. RECOMMENDATION**

Walsh's false statements and material omissions raise significant concerns regarding his credibility and ability to perform his duties as a sworn officer. As a sworn officer, Walsh's reports are relied upon in criminal legal proceedings and his credibility is therefore critical to his position. An officer who has made false statements in an official investigation has irrevocably tainted his credibility and thus has wholly disqualified himself from effectively executing core police functions. Based on this conduct he may be the subject of cross-examination in any contested proceedings in which he may appear as a witness, *see FED. R. EVID. 608(b)* ("Specific instances of conduct"), and his conduct and the findings resulting from this investigation would further qualify as impeachment material that should, in principle, be disclosed in any contested proceeding involving the official records or testimony generated by Walsh. *See Giglio v. United States*, 405 U.S. 150 (1972) (requiring disclosure in criminal case of information impeaching of government witness's credibility). Illinois courts have repeatedly noted that "as the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness" and have found intentional false or misleading statements by police officers to be sufficient cause for termination. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011) (quoting *Sindermann v. Civil Service Comm'n*, 275 Ill. App. 3d 917, 928 (2nd Dist. 1995)). OIG therefore recommends that CPD discharge Walsh and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

## **VII. CPD RULE VIOLATIONS**

**Rule 2** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

**Rule 3** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

**Rule 6** Disobedience of an order or directive, whether written or oral.

**Rule 11** Incompetency or inefficiency in the performance of duty.

**Rule 14** Making a false report, written or oral.

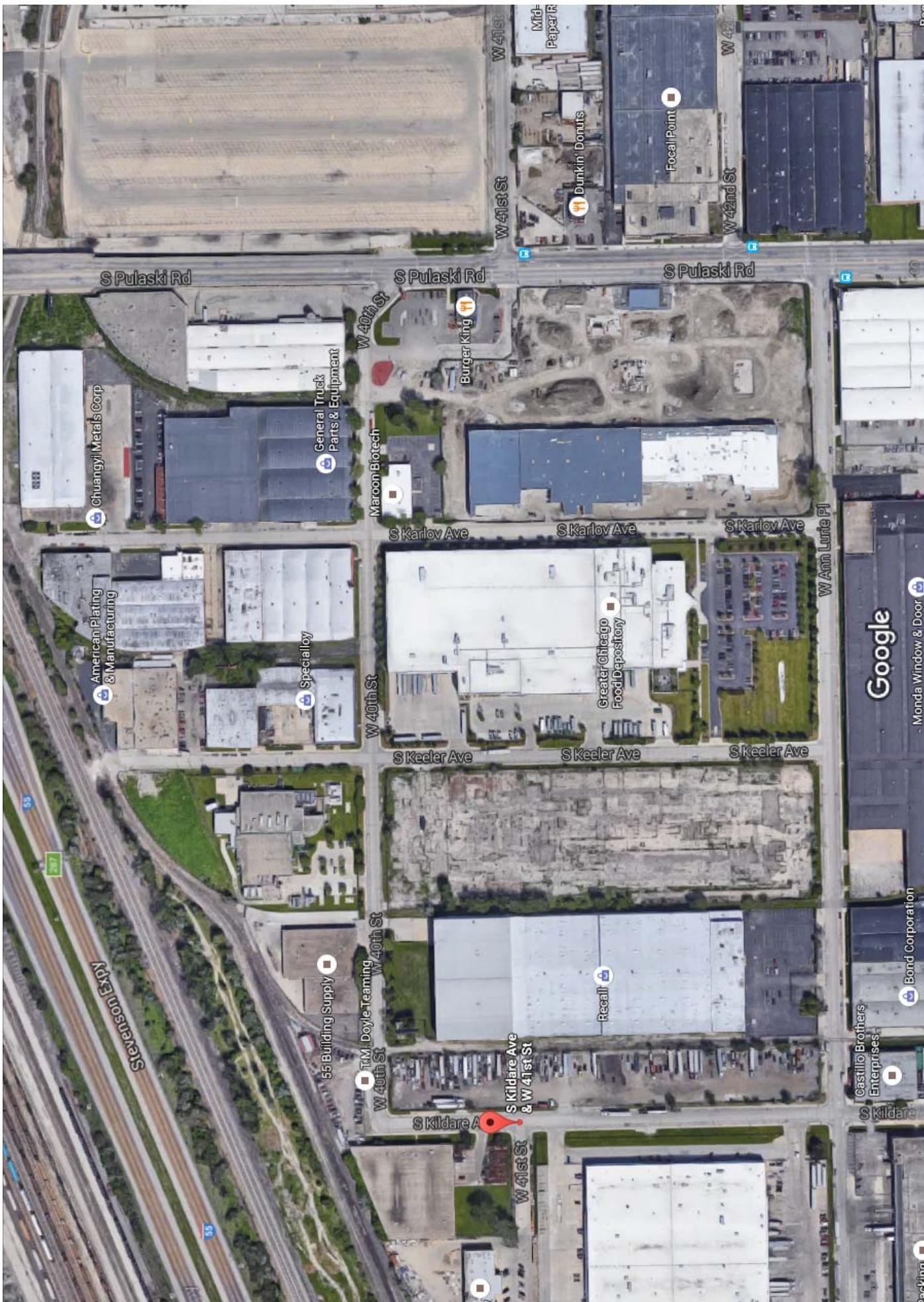
# **Appendix A**

S Kildare Ave & W 41st St - Google Maps

S Pulaski Rd

S Pulaski Rd

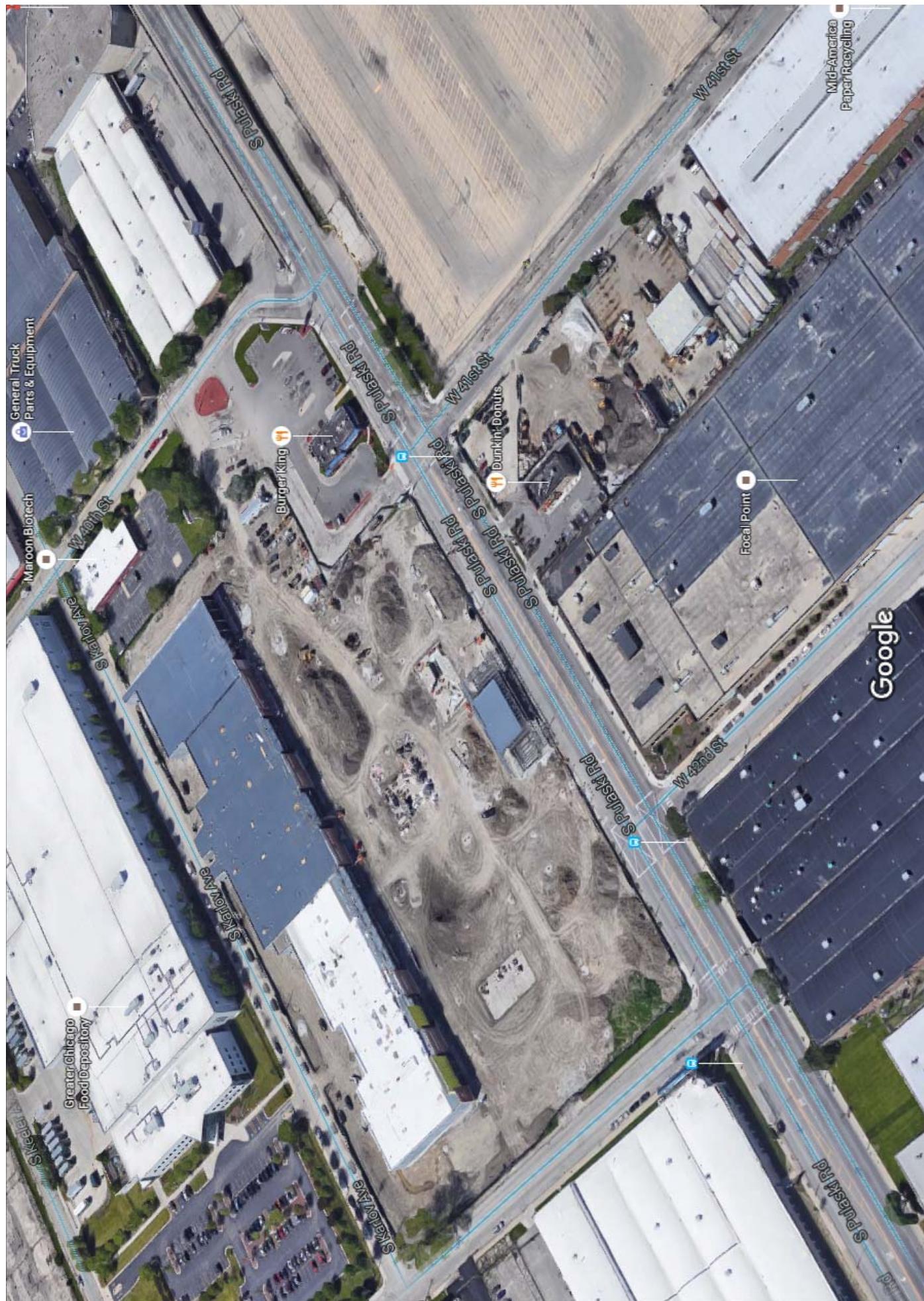
**S Pulaski Rd**



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<https://www.google.com/maps/place/S+Kil+dare+Ave+&+W+41st+St,+Chicago,+IL+60632/@41.8186918,-87.7273251,672m/data=!3m1!1e3!4m2!3m1!1s0x880e3229fb09b15!0x5d496ce5b4e391>



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